

IN THE UNITED STATES DISTRICT COURT
FOR THE DELAWARE DISTRICT

R.W., A Minor, individually, by and through :
his parent and natural guardian SARAH WILLIAMS :
and SARAH WILLIAMS, individually, :
PLAINTIFFS, :

V. :

THE DELAWARE DEPARTMENT OF :
EDUCATION; VALERIE WOODRUFF; :
personally and in her official capacity as :
the Secretary of Education for the State of :
Delaware; THE STATE OF DELAWARE BOARD :
OF EDUCATION; and JOSEPH PIKA, Ph.D.; :
JEAN ALLEN; RICHARD M. FARMER, JR.; :
MARY GRAHAM, ESQ.; BARBARA RUTT; :
DENNIS SAVAGE; CLAIRBOARNE D. :
SMITH; ANNE CASE; VALERIE WOODRUFF; :
personally and in their official capacity as Members :
of the State Board of Education; and :
THE CHRISTINA SCHOOL DISTRICT; JOSEPH J. :
WISE, personally and in his official capacity as the :
Superintendent of the District; DAVID SUNSTROM, :
personally and in his official capacity as the Assistant :
Superintendent of the District; SANDRA COUNTLEY :
personally and in her official capacity; SHARON :
DENNY, personally and in her official capacity; :
FREEMAN WILLIAMS, personally and in his official :
capacity; THE CHRISTINA SCHOOL DISTRICT :
SCHOOL BOARD; BRENDA PHILLIPS; :
JAMES DURR; GEORGE EVANS, ESQUIRE; :
BEVERLY HOWELL; CONSTANCE MERLET :
JOHN MACKENZIE, CECELIA SCHERER; and :
JOSEPH WISE; all personally and in their official :
capacity as Members of the CHRISTINA :
SCHOOL DISTRICT.

C.A. NO. 05-CV-00662

DEFENDANTS. :

**DEFENDANTS THE CHRISTINA SCHOOL DISTRICT BOARD OF EDUCATION,
JOSEPH J. WISE, DAVID SUNSTROM, SANDRA COUNTLEY, SHARON DENNY,
FREEMAN WILLIAMS, BRENDA PHILLIPS, JAMES DURR, GEORGE EVANS,
BEVERLY HOWELL, CONSTANCE MERLET, JOHN MACKENZIE AND CECILIA
SCHERER'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

Plaintiffs in this matter have filed a Complaint which alleges that the Christina School District Board of Education, its Board Members, and various employees discriminated against R.W. and deprived him of constitutional rights with respect to the School District's decision to transfer R.W. to an alternative school after R.W. punched another student in the face. For the reasons stated in the brief filed by the Christina School District defendants contemporaneously with this motion, the Court should dismiss Plaintiffs' Complaint. The Court should dismiss the Complaint because the School District defendants are entitled to either absolute or qualified immunity, Plaintiff's complaint fails to identify similarly situated individuals in a non-protected class, the Due Process Clause is not implicated in school transfer decisions, and supervisory liability claims cannot be brought under 42 U.S.C. § 1983. In addition, because Plaintiff's Complaint is without merit on the face of the Complaint, the Court should award the School District defendants attorneys fees and costs pursuant to 42 U.S.C. § 1988(b), and the Court's rules.

Respectfully submitted,

WHITE AND WILLIAMS LLP



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Attorneys for The Christina School District Board of Education, Joseph J. Wise, David Sunstrom, Sandra Countley, Sharon Denny, Freeman Williams, Brenda Phillips, James Durr, George Evans, Beverly Howell, Constance Merlet, John Mackenzie and Cecilia Scherer

Date: January 17, 2006

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Delaware; THE STATE OF DELAWARE BOARD	:	
OF EDUCATION; and JOSEPH PIKA, Ph.D.;	:	
JEAN ALLEN; RICHARD M. FARMER, JR.;	:	
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THE CHRISTINA SCHOOL DISTRICT; JOSEPH J.	:	
WISE, personally and in his official capacity as the	:	
Superintendent of the District; DAVID SUNSTROM,	:	
personally and in his official capacity as the Assistant	:	
Superintendent of the District; SANDRA COUNTLEY	:	
personally and in her official capacity; SHARON	:	
DENNY, personally and in her official capacity;	:	
FREEMAN WILLIAMS, personally and in his official	:	
capacity; THE CHRISTINA SCHOOL DISTRICT :	:	
SCHOOL BOARD; BRENDA PHILLIPS;	:	
JAMES DURR; GEORGE EVANS, ESQUIRE;	:	
BEVERLY HOWELL; CONSTANCE MERLET	:	
JOHN MACKENZIE, CECELIA SCHERER; and	:	
JOSEPH WISE; all personally and in their official	:	
capacity as Members of the CHRISTINA	:	
SCHOOL DISTRICT.	:	
 DEFENDANTS.		:

CERTIFICATE OF SERVICE

I, William L. Doerler, Esquire, do hereby certify that on this 17th day of January, 2006 one (1) copy of the foregoing were **DEFENDANTS THE CHRISTINA SCHOOL DISTRICT BOARD OF EDUCATION, JOSEPH J. WISE, DAVID SUNSTROM, SANDRA COUNTLEY, SHARON DENNY, FREEMAN WILLIAMS, BRENDA PHILLIPS, JAMES DURR, GEORGE EVANS, BEVERLY HOWELL, CONSTANCE MERLET, JOHN MACKENZIE AND CECILIA SCHERER'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM** delivered via E-File and Serve, and First Class Mail, postage prepaid upon:

Patricia McHale O'Neill
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Craig Romond Fitzgerald
Department of Justice
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Scherer*